

WILLIAM H. KERLIN, JR.

IBLA 85-778

Decided February 19, 1987

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer M 62189.

Affirmed.

1. Notice: Generally -- Oil and Gas Leases: Generally -- Oil and Gas Leases: Stipulations

The Bureau of Land Management may properly reject an over-the-counter noncompetitive oil and gas lease offer when special stipulations are not executed and filed with it within the time limit specified.

APPEARANCES: William H. Kerlin, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

William H. Kerlin, Jr., has appealed the June 25, 1985, decision of the Montana State Office, Bureau of Land Management (BLM), rejecting his over-the-counter oil and gas lease offer on the grounds that he did not return signed special stipulations within thirty days of receiving them.

Appellant filed his over-the-counter offer to lease all of sec. 8, T. 15 N., R. 26 W., Montana Principal Meridian, on November 13, 1984. The lands are located within the Lolo National Forest. In response to an inquiry from BLM, the Regional Forester requested BLM to "attach the following standard stipulations: Form 3109-3 [and] MT 3109-12." On May 7, 1985, BLM issued a decision stating:

The surface managing agency has determined a lease may be issued for all or part of the lands in your offer(s) subject to special stipulations. These stipulations are enclosed, and all copies must be signed, dated and filed in this office before a lease can be issued. Failure to date, sign and file the stipulations in this office within 30 days from the day you receive this Notice will result in rejection of your offer(s).

A return receipt card signed by Pamela J. Smalley is dated May 13, 1985. No copies of the signed stipulations are contained in the record.

In his statement of reasons for appeal appellant states:

* * * the "Additional Requirement-Special Stipulation" was received by a neighbor of mine (Pamela Smalley) when we were out of town. When we returned, our neighbor forgot to give the mailing to us. Hence, I do not feel the May 7, 1985 notice was officially delivered to me and respectfully ask you reconsider. [1/]

Appellant's offer bears the address "256 Tri-Hill Road, York, PA 17403," and it was to this address that BLM mailed the special stipulations. 43 CFR 1810.2(b) provides that the addressee of a communication will be deemed to have received it, whether or not it was in fact received, if it was delivered to the addressee's last known address of record. First Mississippi Corp., 62 IBLA 184, 186 (1982); see Lawrence E. Welsh, Jr., 91 IBLA 324 (1986). Appellant must therefore be regarded as having received the special stipulations on May 13, 1985.

[1] The Secretary of the Interior may require the execution of special stipulations as a condition precedent to issuing an oil and gas lease for lands located in a national forest. James M. Chudnow, 91 IBLA 143, 145 (1986); Bill Mathis, 90 IBLA 353 (1986); 43 CFR 3101.7-4. In the exercise of that authority, BLM may impose a 30-day time limit for filing the signed stipulations or objecting to them. Bill Mathis, *supra*, at 355. If the stipulations are filed after such a deadline but before BLM rejects the offer, BLM may accept them in accordance with 43 CFR 1821.2-2(g). *Id.* Where they are not filed, however, BLM may properly reject an over-the-counter offer to lease. James M. Chudnow, 69 IBLA 87 (1982); First Mississippi Corp., *supra*. Appellant may no longer cure the defect in his offer by filing the signed stipulations. Gian R. Cassarino, 78 IBLA 242, 91 I.D. 9 (1984).

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's June 25, 1985, decision is affirmed.

Will A. Irwin
Administrative Judge

We concur:

James L. Burski
Administrative Judge

John H. Kelly

Administrative Judge

^{1/} In an attempt to obtain fuller information about the circumstances of the receipt of the notice, the Board, by order of December 12, 1986, directed appellant to provide it with an affidavit from Pamela J. Smalley. No response was forthcoming.

